

EXHIBIT 9

2 of 2

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9 - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED JULY 31, 2013
(PAGES 70-109)**

FILED UNDER SEAL

Page 110	Page 112
<p>1 suggested a minimal bonus and I can't recall 2 the exact years, but typically in more 3 challenging years that would be a guidance we 4 would give. 5 Q. If I wanted to know what the 6 specific guidance was on this topic for each 7 year, where would I go to find it? 8 A. One place to look would be in 9 the e-mails. 10 Q. How about for years in which 11 IMD did not send launch e-mails? 12 A. In years where IMD did not send 13 launch e-mails it may have been verbal 14 conversations when we launched the process 15 with the business units. 16 MS. SHAVER: This is a good 17 time to take a break. 18 (Luncheon recess taken at 19 12:45 p.m.) 20 21 22 23 24 25</p>	<p>1 would look to finalize our recommendations 2 and submit it for round two. 3 Q. What's involved in finalizing 4 your recommendations? 5 A. To the extent that we receive 6 more money or less money, we would go through 7 a similar process again where if additional 8 monies need to be are given to us or if money 9 is taken away from us and the firm doesn't 10 specify in which businesses that needs to 11 occur, our CFO team would revisit the budget 12 allocations to the best units and the 13 business units would have an opportunity to 14 revise recommendations in order to meet that 15 new budget. 16 Q. Does that opportunity to revise 17 extend to compensation managers underneath 18 the business units? 19 A. It does. 20 Q. Does the compensation committee 21 hold a round two meeting? 22 A. The compensation committee does 23 meet again to review the round two 24 recommendations. It's not typically in the 25 same format as the round one recommendations</p>
Page 111	Page 113
<p>1 AFTERNOON SESSION 2 (Time Noted: 1:20 p.m.) 3 4 JESSICA KUNG, resumed and testified 5 as follows: 6 7 CONTINUED EXAMINATION 8 BY MS. SHAVER: 9 10 Q. Welcome back. We were talking 11 this morning about the compensation process 12 in IMD and you were describing to me some of 13 the steps that the division goes through. I 14 think we left off where IBD may receive some 15 guidance back from the firm wide group, do 16 you recall that? 17 MS. SULLIVAN: Objection vague. 18 A. Yes, we left it off where IMD 19 submitted its round one results to the firm 20 and may have received additional guidance or 21 instructions from the firm. 22 Q. So what's the next step in the 23 process? 24 A. So the next step in the process 25 is once we receive any additional guidance we</p>	<p>1 meaning business units don't come and 2 formally present again. 3 Q. Are there any other ways in 4 which the format is different than the round 5 one meetings? 6 A. The main difference is it's not 7 a formal presentation by the business units 8 to the compensation committee. 9 Q. Are there times when the 10 compensation committee has asked business 11 unit leaders to come and present at the round 12 two meeting? 13 A. To the extent that budgets and 14 numbers change for businesses, the 15 compensation committee will engage again in a 16 dialogue with the business unit heads to 17 understand their thought process and 18 philosophy and where they have made changes, 19 but it may not necessarily be in a room 20 face-to-face type meeting. 21 Q. How else might that dialogue 22 take place? 23 A. It could take place over the 24 phone. 25 Q. Could it take place over</p>

Page 114	Page 116
<p>1 e-mail?</p> <p>2 A. I cannot recall instances where</p> <p>3 that's happened over e-mail.</p> <p>4 Q. Any other ways?</p> <p>5 A. Nothing that I can recall at</p> <p>6 the moment.</p> <p>7 Q. Either by phone or in a</p> <p>8 face-to-face meeting?</p> <p>9 A. Right.</p> <p>10 Q. Does HCM IMD prepare the same</p> <p>11 set of materials for the round two meetings</p> <p>12 for the round one meeting?</p> <p>13 A. We prepare a similar set of</p> <p>14 materials. We don't reproduce and I'm</p> <p>15 looking at the 2010 materials. As an example,</p> <p>16 we don't reproduce the P&L, the financial</p> <p>17 package because that stays the same, but in</p> <p>18 terms of the other summaries and rosters we</p> <p>19 will refresh those as needed for the new</p> <p>20 results.</p> <p>21 Q. What's the next step after that</p> <p>22 second compensation committee meeting?</p> <p>23 A. Assuming no more adjustments</p> <p>24 are needed we're done with compensation. The</p> <p>25 numbers are finalized. We submit those to</p>	<p>1 were the years where we had more iterations</p> <p>2 and a higher likelihood of having a round</p> <p>3 three so thinking back possibly 2008, around</p> <p>4 that time.</p> <p>5 Q. Just to be sure we are using</p> <p>6 the same terminology, when you say round</p> <p>7 three, are you referring to an iteration</p> <p>8 subsequent to submitting round two numbers to</p> <p>9 firm wide comp?</p> <p>10 A. Yes.</p> <p>11 Q. As distinguished from round 2A</p> <p>12 or 2B that would be before you submit to firm</p> <p>13 wide comp?</p> <p>14 A. That's right.</p> <p>15 Q. Why have you tended to have --</p> <p>16 strike that. Why is there a higher</p> <p>17 likelihood of having a round three in more</p> <p>18 challenging years?</p> <p>19 A. We would have a round three in</p> <p>20 response to even more additional guidance</p> <p>21 from the firm once they have reviewed our</p> <p>22 macro results. In more challenging years as</p> <p>23 the firm's performance continues -- as the</p> <p>24 firm continues to get more data points on</p> <p>25 performance both at the Goldman level as well</p>
Page 115	Page 117
<p>1 the firm.</p> <p>2 Q. Do you submit them to firm</p> <p>3 side?</p> <p>4 A. Firm side comp, yes.</p> <p>5 Q. Does the management committee,</p> <p>6 the firm wide management committee review</p> <p>7 those numbers?</p> <p>8 A. My understanding is that they</p> <p>9 will review the updated numbers.</p> <p>10 Q. Has IMD ever had a third round</p> <p>11 in the comp process?</p> <p>12 A. It's unusual for us to have a</p> <p>13 third round, but we have had third round</p> <p>14 before.</p> <p>15 Q. Do you recall in which years</p> <p>16 you had third rounds?</p> <p>17 A. We have had third rounds on a</p> <p>18 couple of occasions and compensation is a</p> <p>19 very iterative process so in some years it's</p> <p>20 difficult to clearly delineate what's round</p> <p>21 two and what's round three because you might</p> <p>22 feel that there is a round 2A or round 2B or</p> <p>23 round 2C as recommendations continue to</p> <p>24 iterate. As far as the specific years, I</p> <p>25 would say that the more challenging years</p>	<p>1 as IMD level, there is a possibility that</p> <p>2 they may give updated guidance meaning giving</p> <p>3 us more money or asking us to take away even</p> <p>4 more than what we did during round two.</p> <p>5 Q. Other than giving more money or</p> <p>6 less money to IMD, are you aware of any other</p> <p>7 reasons for round three?</p> <p>8 A. I'm not.</p> <p>9 Q. We've been talking about the</p> <p>10 compensation process and I'd like to shift</p> <p>11 focus a little bit to compensation decisions.</p> <p>12 I'd like to focus for now on the time period</p> <p>13 from 2002 to 2010, okay?</p> <p>14 Q. This has been previously marked</p> <p>15 as Exhibit 132. Do you recognize this</p> <p>16 document?</p> <p>17 A. Let me take a moment to scan</p> <p>18 it.</p> <p>19 MS. SHAVER: I'll note for the</p> <p>20 record that the numbers are</p> <p>21 consecutive, but it does appear that</p> <p>22 they were produced out of order, but</p> <p>23 we have chosen to put the exhibit in</p> <p>24 the correction order of the Bates</p> <p>25 number.</p>

Page 118	Page 120
<p>1 Q. Do you recognize this document?</p> <p>2 A. I do recognize parts of this</p> <p>3 document, yes.</p> <p>4 Q. Can you tell me what it is?</p> <p>5 A. My understanding is that this</p> <p>6 document is from 2006 and my understanding is</p> <p>7 also that it's a firm wide document and it</p> <p>8 talks about a firm wide change in moving from</p> <p>9 a so-called compensation quartile or quartile</p> <p>10 that was primarily used for compensation to a</p> <p>11 quartile that in this year was called manager</p> <p>12 performance rating.</p> <p>13 Q. Was it called manager</p> <p>14 performance rank?</p> <p>15 A. Manager performance rank.</p> <p>16 Q. Was this document distributed</p> <p>17 to employees in IMD?</p> <p>18 A. I do not believe this was</p> <p>19 distributed to all employees in IMD.</p> <p>20 Q. Was it distributed to any</p> <p>21 employees in IMD?</p> <p>22 A. I don't believe so.</p> <p>23 Q. Does the policy change</p> <p>24 described in this document apply to IMD?</p> <p>25 MS. SULLIVAN: Objection vague.</p>	<p>1 Q. Was that change back in 2008?</p> <p>2 A. The change from MPR back to</p> <p>3 quartiling?</p> <p>4 Q. Yes.</p> <p>5 A. That sounds about right.</p> <p>6 Q. Is it your understanding that</p> <p>7 this document the manager guidelines set</p> <p>8 forth in this document are meant to apply</p> <p>9 firm wide?</p> <p>10 A. Given that this is a firm wide</p> <p>11 document at a high level, this is meant to</p> <p>12 apply to all divisions in the firm, but of</p> <p>13 course divisions will have their own nuances</p> <p>14 as well.</p> <p>15 Q. Do you know who's the author of</p> <p>16 this document?</p> <p>17 A. I believe it would be the</p> <p>18 talent assessment group.</p> <p>19 Q. Do you know which employees in</p> <p>20 investment management if any would have</p> <p>21 received and reviewed this document?</p> <p>22 A. I'm not sure, but if we did</p> <p>23 distribute this document to employees in IMD,</p> <p>24 it would have gone to our managers who were</p> <p>25 involved in the process.</p>
Page 119	Page 121
<p>1 A. At a practical level it didn't</p> <p>2 change how IMD did its quartiling process or</p> <p>3 what was called the MPR process in this year.</p> <p>4 Q. Is that because IMD already did</p> <p>5 that?</p> <p>6 A. Yes, in the sense that</p> <p>7 performance potential was always considered</p> <p>8 as factors into the quartile or manager</p> <p>9 performance rank and quartile was not used in</p> <p>10 the formulaic way that's described in this</p> <p>11 document for compensation.</p> <p>12 Q. In 2006 did IMD use the manager</p> <p>13 performance rank instead of manager quartile?</p> <p>14 A. Yes, essentially it was the</p> <p>15 manager quartile, it was just called the</p> <p>16 manager performance rank.</p> <p>17 Q. In previous years it had been</p> <p>18 called the quartile and in 2006 it was called</p> <p>19 a rank, but it's the same thing; is that</p> <p>20 fair?</p> <p>21 A. Yes, so previously it was</p> <p>22 called quartile, then it became manager</p> <p>23 performance rank or MPR and then we changed</p> <p>24 back to quartiling, but it was the same</p> <p>25 process.</p>	<p>1 Q. Could you please take a look at</p> <p>2 what's the third page of the document Bates</p> <p>3 marked 122589?</p> <p>4 A. Sure.</p> <p>5 Q. Entitled guidelines for</p> <p>6 compensation proposals, you with me?</p> <p>7 A. I'm with you.</p> <p>8 Q. It reads the compensation</p> <p>9 proposal for each individual should reflect</p> <p>10 and then it sets forth four bullet points.</p> <p>11 Could you read those to yourself, please?</p> <p>12 A. Okay.</p> <p>13 Q. Is it true in IMD that these</p> <p>14 four factors are considered in manager's</p> <p>15 compensation proposals?</p> <p>16 A. It's true.</p> <p>17 Q. How do managers ascertain P&L</p> <p>18 impact in IMD?</p> <p>19 A. So as I said before, managers</p> <p>20 in the business receive regular reporting</p> <p>21 both from their own business unit reporting</p> <p>22 management teams as well as from our CFO team</p> <p>23 so they have this information readily</p> <p>24 available throughout the year and during comp</p> <p>25 as well.</p>

Page 122	Page 124
<p>1 Q. By this information you mean</p> <p>2 P&L impact?</p> <p>3 A. Yes and other financial</p> <p>4 metrics.</p> <p>5 Q. In what form do the managers</p> <p>6 receive regular reporting?</p> <p>7 A. They receive it by e-mail from</p> <p>8 our CFO team. They also receive regular</p> <p>9 reporting from their own business teams. As</p> <p>10 to the nature of that format, it varies from</p> <p>11 business to business.</p> <p>12 Q. Apart from receiving these</p> <p>13 reports from their team or from the CFO team,</p> <p>14 are managers able to go and look up this</p> <p>15 information at their own election and again I</p> <p>16 want to focus on the time period 2002 to</p> <p>17 2010?</p> <p>18 A. Given that these metrics would</p> <p>19 be critical to running one's business, they</p> <p>20 would be able to access this information on</p> <p>21 an as needed basis.</p> <p>22 Q. Where was that information</p> <p>23 stored?</p> <p>24 A. Each business will have its own</p> <p>25 way of storing their information whether it's</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 123	Page 125
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9 - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED JULY 31, 2013
(PAGES 126-153)**

FILED UNDER SEAL

Page 154	Page 156
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q. Outside of the compensation</p> <p>2 process that you described this morning, are</p> <p>3 there any other checks and balances on</p> <p>4 whether managers have considered the proper</p> <p>5 factors in coming up with compensation</p> <p>6 recommendations?</p> <p>7 MS. SULLIVAN: Same objection</p> <p>8 vague.</p> <p>9 A. The checks and balances I</p> <p>10 described pertain and occur during the</p> <p>11 compensation process.</p> <p>12 Q. Nothing apart from what you</p> <p>13 already described?</p> <p>14 A. Not that I can think of at this</p> <p>15 time.</p> <p>16 Q. At the end of Exhibit 132 you</p> <p>17 see a heading that reads 2006 monitoring</p> <p>18 process, do you see that, on the page Bates</p> <p>19 stamped 122590?</p> <p>20 A. Yes, I see the page.</p> <p>21 Q. Do you see the heading 2006</p> <p>22 monitoring process at the bottom?</p> <p>23 A. Yes.</p> <p>24 Q. Did IMD provide information to</p> <p>25 the Goldman Sachs legal department in</p>
Page 155	Page 157
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 connection with this process?</p> <p>2 MS. SULLIVAN: I'll allow the</p> <p>3 witness to answer yes or no.</p> <p>4 A. The individuals on the HCM team</p> <p>5 who do data reporting provided information to</p> <p>6 the legal department in connection with this</p> <p>7 review.</p> <p>8 Q. In what years?</p> <p>9 A. My understanding is that this</p> <p>10 review happens every year.</p> <p>11 Q. Is that true from 2002 to the</p> <p>12 present?</p> <p>13 A. Yes, I believe so.</p> <p>14 Q. If you wanted to, would you be</p> <p>15 able to view the information that the data</p> <p>16 reporting team provided to the legal</p> <p>17 department in connection with this review?</p> <p>18 MS. SULLIVAN: Objection vague.</p> <p>19 A. My understanding is that</p> <p>20 information and those materials are</p> <p>21 privileged so for me personally to the extent</p> <p>22 I was involved in that review from a business</p> <p>23 partner perspective I could see the</p> <p>24 information, otherwise if I wanted to see the</p> <p>25 specific reports I would need to make sure</p>

Page 158	Page 160
<p>1 that others were comfortable with it.</p> <p>2 Q. What is the independent review</p> <p>3 process referred to here?</p> <p>4 MS. SULLIVAN: We are getting</p> <p>5 into privileged questions here so if</p> <p>6 you can rephrase the question she can</p> <p>7 answer a yes or no. Are you trying to</p> <p>8 get at the questions that the judge</p> <p>9 has -- the diversity object discussion</p> <p>10 that we have been having separate from</p> <p>11 this deposition?</p> <p>12 MS. DERMODY: This is a</p> <p>13 document to your managers, right, and</p> <p>14 it describes a process that cannot</p> <p>15 possibly be privileged going out to</p> <p>16 your managers so presumably you have a</p> <p>17 witness who can testify to what the</p> <p>18 process is. It's outside the</p> <p>19 privilege of that process.</p> <p>20 MS. SULLIVAN: No, there is a</p> <p>21 statement here that by no way means</p> <p>22 that what the legal team does is not</p> <p>23 privileged so she can answer to the</p> <p>24 extent that the judge issued an</p> <p>25 opinion she can answer some yes or no</p>	<p>1 separate and apart from this</p> <p>2 deposition and she's not going to</p> <p>3 testify about that process.</p> <p>4 MS. SHAVER: Are you</p> <p>5 instructing the witness not to answer?</p> <p>6 MS. SULLIVAN: Yes. You can</p> <p>7 ask her if there was -- you can ask</p> <p>8 her if it's her understanding that</p> <p>9 that occurred, she can say yes or no.</p> <p>10 You cannot get into what the legal</p> <p>11 privileged process was.</p> <p>12 MS. SHAVER: I can get you on</p> <p>13 the record that you are instructing</p> <p>14 the witness not to answer so let's</p> <p>15 move forward.</p> <p>16 MS. SULLIVAN: Sure.</p> <p>17 Q. What data does IMD provide to</p> <p>18 the legal department in connection with this</p> <p>19 independent review process?</p> <p>20 MS. SULLIVAN: That's</p> <p>21 privileged. She's not going to answer</p> <p>22 that question.</p> <p>23 Q. As a result of this process,</p> <p>24 were any compensation decisions in IMD</p> <p>25 changed?</p>
Page 159	Page 161
<p>1 questions, but we will not get into</p> <p>2 the review that the legal department</p> <p>3 does.</p> <p>4 MS. HAN: For the record, there</p> <p>5 is a process in place. The result is</p> <p>6 not privileged, the content of that</p> <p>7 review is privileged.</p> <p>8 MS. SHAVER: We haven't even</p> <p>9 established that the witness is saying</p> <p>10 this is reviewing to that privileged</p> <p>11 process.</p> <p>12 MS. SULLIVAN: You can ask her</p> <p>13 that and she can say yes or no.</p> <p>14 Q. What's the independent review</p> <p>15 process?</p> <p>16 A. The process that's described</p> <p>17 here is referring to that privileged process</p> <p>18 that I mentioned earlier which focuses on</p> <p>19 women and historically under represented</p> <p>20 groups.</p> <p>21 Q. What was the purpose of the</p> <p>22 independent review process?</p> <p>23 MS. SULLIVAN: Objection.</p> <p>24 That's privileged. You've already</p> <p>25 actually got information on that</p>	<p>1 MS. SULLIVAN: Objection vague.</p> <p>2 A. Compensation decisions can be</p> <p>3 changed as a result of the process, but after</p> <p>4 this review by legal their role is really to</p> <p>5 ask any questions they may have and discuss</p> <p>6 that with the managers and the business so</p> <p>7 it's a conversation rather than legal having</p> <p>8 a specific view on a specific employee and</p> <p>9 changing that without the businesses</p> <p>10 knowledge or agreement.</p> <p>11 Q. Are you aware of any instances</p> <p>12 in which compensation decisions have been</p> <p>13 changed as a result of this review process?</p> <p>14 MS. SULLIVAN: Objection, asked</p> <p>15 and answered.</p> <p>16 A. As I stated before, I'm aware</p> <p>17 of changes that have resulted from this</p> <p>18 process.</p> <p>19 Q. How many?</p> <p>20 A. I would say that in every year</p> <p>21 it's quite rare and if we do have changes, it</p> <p>22 would only be a handful of individuals. Of</p> <p>23 course that varies from year to year.</p> <p>24 Q. When you say handful, do you</p> <p>25 mean more than ten?</p>

Page 162	Page 164
<p>1 MS. SULLIVAN: Objection.</p> <p>2 A. It's difficult to recall</p> <p>3 specific numbers going back during all of</p> <p>4 those years, but I would say a handful</p> <p>5 meaning fewer than ten.</p> <p>6 Q. Are you aware of any year in</p> <p>7 which there were more than ten changes as a</p> <p>8 result of this process?</p> <p>9 MS. SULLIVAN: Objection vague.</p> <p>10 A. Not that I can recall.</p> <p>11 Q. How about changes to manager</p> <p>12 performance rank or manager performance</p> <p>13 quartile if it's called that, are you aware</p> <p>14 of any instances in which there has been</p> <p>15 changes to manager performance quartile as a</p> <p>16 result of this review process?</p> <p>17 MS. SULLIVAN: Objection vague.</p> <p>18 A. Similar to what I said for</p> <p>19 compensation also holds true for just call it</p> <p>20 quartiling for ease. Legal has an</p> <p>21 opportunity to ask questions and engage in a</p> <p>22 dialogue with the business managers after</p> <p>23 their review and changes may come out of it,</p> <p>24 but again, it's not legal making the change</p> <p>25 without their knowledge and agreement, it's a</p>	<p>1 MS. DERMODY: The existence of</p> <p>2 notes itself is not privileged so if</p> <p>3 there are documents --</p> <p>4 MS. SULLIVAN: If there are</p> <p>5 documents kept by lawyers, we're not</p> <p>6 going to discuss it.</p> <p>7 MS. DERMODY: If there are</p> <p>8 documents that are kept, you can</p> <p>9 assert that the contents cannot be</p> <p>10 disclosed, but there's no privilege to</p> <p>11 the creation of a document.</p> <p>12 MS. SULLIVAN: She can answer</p> <p>13 yes or no. She will not answer</p> <p>14 anything about whether the lawyer are</p> <p>15 keeping notes. If you want to clarify</p> <p>16 your question about other documents,</p> <p>17 she can answer that question, but I</p> <p>18 want to make sure the record is clear</p> <p>19 she's not testifying about any notes</p> <p>20 the lawyers may have kept.</p> <p>21 Q. In the meetings that take place</p> <p>22 between legal and the division in connection</p> <p>23 with this independent review process, are</p> <p>24 there any notes generated during those</p> <p>25 meetings?</p>
Page 163	Page 165
<p>1 discussion.</p> <p>2 MS. SULLIVAN: I don't want to</p> <p>3 get into any more about the</p> <p>4 discussions so I'll ask the witness to</p> <p>5 stop there.</p> <p>6 Q. Are you aware of any instances</p> <p>7 where changes have been made to manager</p> <p>8 quartiles as a result of this review process?</p> <p>9 A. I am aware.</p> <p>10 Q. How many instances?</p> <p>11 MS. SULLIVAN: Objection vague.</p> <p>12 A. Similar to what I said for</p> <p>13 compensation. They are relatively rare and</p> <p>14 the numbers vary from year to year, but I</p> <p>15 would say a handful fewer than ten.</p> <p>16 Q. Each year?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know if any notes are</p> <p>19 kept regarding this independent review</p> <p>20 process?</p> <p>21 MS. SULLIVAN: I'll ask the</p> <p>22 witness not to answer that question.</p> <p>23 It's a privileged process. Notes that</p> <p>24 may be kept may be kept by attorneys.</p> <p>25 She's not to testify about that.</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9 - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED JULY 31, 2013
(PAGES 166-189)**

FILED UNDER SEAL

Page 190	Page 192
<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 MS. SULLIVAN: Objection vague.</p>	<p>1 A. Aside from HCM proactively</p> <p>2 flagging by e-mailing managers where</p> <p>3 individuals have made significant</p> <p>4 contributions, there is no metric or roster</p> <p>5 that lists specialized contributions that I'm</p> <p>6 aware of or training.</p> <p>7 Q. Is there any training provided</p> <p>8 to managers in HCM on how to weigh these</p> <p>9 various factors, these four square bullet</p> <p>10 points in this document against each other?</p> <p>11 MS. SULLIVAN: Objection vague.</p> <p>12 A. Managers know that all four of</p> <p>13 these are important factors to consider when</p> <p>14 thinking about compensation. They also</p> <p>15 understand that the factors will have</p> <p>16 different weights depending on the business</p> <p>17 or department in question. For example, if</p> <p>18 you have a small business that's very</p> <p>19 strategic and growing, one might argue that</p> <p>20 the indispensability or risk of losing the</p> <p>21 individual, you know, on balance relative to</p> <p>22 the other factors may weigh more heavily so</p> <p>23 as far as whether we have specific</p> <p>24 percentages adding up to 100 for each of</p> <p>25 these four bullets, it would be challenging</p>
Page 191	Page 193
<p>1 A. Can you rephrase the question?</p> <p>2 Q. Does IMD provide managers with</p> <p>3 any training on how to evaluate specialized</p> <p>4 contributions to people processes?</p> <p>5 A. HCM flags specialized</p> <p>6 contributions to people processes to managers</p> <p>7 so in the examples I gave where it relates to</p> <p>8 an employee being a diversity champion or a</p> <p>9 recruiting champion or someone whose</p> <p>10 committed a significant amount of time to one</p> <p>11 of our training programs, we HCM will post</p> <p>12 the manager and often times the business head</p> <p>13 as well on the amount of time they</p> <p>14 contributed outside of their quote unquote</p> <p>15 day job.</p> <p>16 Q. How does HCM flag specialized</p> <p>17 contributions?</p> <p>18 A. We e-mail the managers to let</p> <p>19 them know.</p> <p>20 Q. Are you aware of any training</p> <p>21 that's provided to managers on how to</p> <p>22 evaluate this criteria specialized</p> <p>23 contributions?</p> <p>24 MS. SULLIVAN: Objection, asked</p> <p>25 and answered.</p>	<p>1 for us to give specific weights to all four</p> <p>2 factors to all of our businesses which are</p> <p>3 all very different among themselves and</p> <p>4 within themselves.</p> <p>5 Q. Are you aware of any trainings</p> <p>6 for managers on that topic, on the topic of</p> <p>7 how to weigh these various factors?</p> <p>8 MS. SULLIVAN: Objection, asked</p> <p>9 and answered.</p> <p>10 A. As I've said before, our</p> <p>11 managers are very experienced and well versed</p> <p>12 and should they have any questions about what</p> <p>13 they should consider or how they should</p> <p>14 consider these factors, there is resources</p> <p>15 for them whether that's HCM or other managers</p> <p>16 or their business heads.</p> <p>17 Q. Are there any trainings</p> <p>18 available to them?</p> <p>19 MS. SULLIVAN: Objection vague.</p> <p>20 A. Because as I said before this</p> <p>21 is so nuanced for each business or even</p> <p>22 within a business it would be -- we feel that</p> <p>23 guidance is best coming from other managers</p> <p>24 in the business, the business head or even</p> <p>25 HCM so as far as a specific training that</p>

Page 194	Page 196
<p>1 points to how you should rate or how you</p> <p>2 should weigh each of these four factors, I</p> <p>3 can't think of any at the time.</p> <p>4 Q. These were firm wide and IMD</p> <p>5 factors, correct?</p> <p>6 MS. SULLIVAN: Objection vague.</p> <p>7 It's unclear from the question as</p> <p>8 asked.</p> <p>9 Q. On the page that's marked</p> <p>10 122589, the first bullet point that reads the</p> <p>11 compensation proposal should -- for each</p> <p>12 individual should reflect and it lists a</p> <p>13 number of factors, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Those apply -- the factors</p> <p>16 listed are P&L impact in the current year,</p> <p>17 indispensability of/risk of losing the</p> <p>18 individual, recent significant increase in</p> <p>19 responsibility and specialized contribution</p> <p>20 e.g. to diversity training recruiting in</p> <p>21 current year, those apply both firm wide and</p> <p>22 in IMD, correct?</p> <p>23 A. This is a firm wide document so</p> <p>24 this would apply firm wide. It does apply to</p> <p>25 IMD as well, but these are very high level</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 195	Page 197
<p>1 bullet points and what it actually means to</p> <p>2 the businesses and IMD will be different.</p> <p>3 Q. Is that true back to 2002?</p> <p>4 A. Yes, that would be true back to</p> <p>5 2002.</p> <p>6 Q. Just to clarify the record, is</p> <p>7 it true that these factors apply to IMD back</p> <p>8 to 2002?</p> <p>9 MS. SULLIVAN: Just so the</p> <p>10 record is clear, are you referring to</p> <p>11 the factors on this page or the four</p> <p>12 bullets you just read?</p> <p>13 MS. SHAVER: Both.</p> <p>14 A. Yes, it applies to IMD back to</p> <p>15 2002.</p> <p>16 Q. Were there other division wide</p> <p>17 factors for IMD beyond those listed here on</p> <p>18 this page that I just read?</p> <p>19 MS. SULLIVAN: I'm sorry, just</p> <p>20 so it's clear the ones you read are</p> <p>21 the ones listed on the page because</p> <p>22 there's more than you read.</p> <p>23 Q. Were there other division wide</p> <p>24 factors for IMD beyond P&L impact in the</p> <p>25 current year, indispensability of/risk of</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

**DECLARATION OF THEODORE O. ROGERS, JR.
IN OPPOSITION TO PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

**EXHIBIT 9 - TRANSCRIPT OF THE DEPOSITION OF JESSICA KUNG
DATED JULY 31, 2013
(PAGES 198-221)**

FILED UNDER SEAL

Page 222

REDACTED FILED UNDER SEAL

Page 224

REDACTED FILED UNDER SEAL

Page 223

REDACTED FILED UNDER SEAL

Page 225

MS. SHAVER: Exhibit 223.

(Plaintiff's Exhibit 223,
IMD Inherent Risk Document,
marked for Identification.)

Q. Is Exhibit 223 appendix B to
Exhibit 213, the IMD inherent risk document?

A. Yes, it is.

Q. Were any of these appendices
distributed to managers in IMD?

A. Not that I'm aware of.

MS. SHAVER: This will be the
next exhibit 224.

(Plaintiff's Exhibit 2214,
Roster, marked for Identification.)

Q. Do you recognize Exhibit 224?

MS. SULLIVAN: They are marked
as attorneys eyes only several of
these so the testimony around them
would be -- also we'll designate that
as attorneys eyes only as well.

A. Yes, I do recognize the
exhibit.

Q. What is it?

**A. This is a roster for self
sustaining or commissioned PWA's as of 2011.**

Page 226	Page 228
<p>1 It lists their -- actually this doesn't</p> <p>2 appear to be all of our PWA's but some in New</p> <p>3 York and some in Atlanta, their team member,</p> <p>4 their title and the AGC's or adjusted gross</p> <p>5 credits for the calendar year 2011.</p> <p>6 Q. This applies just to</p> <p>7 commissioned employees?</p> <p>8 A. It applies just to commissioned</p> <p>9 employees.</p> <p>10 Q. Can you please turn back to</p> <p>11 Exhibit 214, the divisional metrics chart.</p> <p>12 Some of the questions I'm going to ask you</p> <p>13 will sound familiar because I asked them</p> <p>14 about an earlier time period and now I need</p> <p>15 to ask them about the time period 2011 to the</p> <p>16 present?</p> <p>17 A. Okay.</p> <p>18 Q. So my first question is whether</p> <p>19 managers are given any training on how to</p> <p>20 weight the various metrics that apply to</p> <p>21 their businesses?</p> <p>22 A. So as I said before in my</p> <p>23 response the approach that was taken in the</p> <p>24 earlier time period that we talked about</p> <p>25 still applies in the current time period.</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 227	Page 229
<p>1 Q. Thank you. Is there any way to</p> <p>2 tell which metrics managers have relied on in</p> <p>3 determining their compensation</p> <p>4 recommendations?</p> <p>5 MS. SULLIVAN: Objection vague.</p> <p>6 A. Can you rephrase?</p> <p>7 Q. So, for example, if a business</p> <p>8 unit leader wanted to ascertain which metrics</p> <p>9 a manager relied on in determining</p> <p>10 compensation proposal, would there be any way</p> <p>11 for the business unit leader to do so?</p> <p>12 MS. SULLIVAN: Same objection.</p> <p>13 A. The business unit leader has</p> <p>14 conversations with managers after they make</p> <p>15 their initial recommendation and part of that</p> <p>16 discussion is to understand how managers</p> <p>17 arrived at those numbers so through that</p> <p>18 discussion the business unit leader would</p> <p>19 understand what factors were taken into</p> <p>20 consideration and whether any were weighted</p> <p>21 more heavily than another depending on the</p> <p>22 business and its priorities.</p> <p>23 Q. Is there any way to do so</p> <p>24 without asking the manager orally?</p> <p>25 A. From the business heads</p>	<p>1 REDACTED FILED UNDER SEAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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